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2d SENATE CS FOR CS FOR HOUSE BILL NO. 77(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; establishing that performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible use of the Wood-Tikchik State Park; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

(c) The department may authorize an activity on state land that the department may authorize already through permit under AS 38.05 or AS 38.95 or a regulation

adopted under AS 38.05 or AS 38.95 by the issuance of a general permit if the department finds that the activity is unlikely to result in significant or irreparable harm to state land or resources. The department shall provide public notice and opportunity for public comment on a proposed general permit for a period of not less than 30 days. After the public comment period for a proposed general permit, if the department decides to issue the general permit, the department shall make available to the public a written decision issuing the general permit. The decision shall describe the scope of activity authorized by the general permit and contain a finding that the activity is unlikely to result in significant or irreparable harm to state land or resources. The decision to issue a general permit is appealable under AS 44.37.011. A decision not to issue a general permit may not be appealed. After a general permit is issued and the appeal period has ended, the general permit may not be appealed on the basis of subsequent activities that adhere to the terms of the general permit. An activity that adheres to the terms of an issued general permit does not require separate public notice. This subsection does not apply to land designated or authorizations issued under AS 16.20, AS 27.21, AS 41.17, or AS 41.21. If there is a conflict between this subsection and AS 38.04, AS 38.05, or AS 38.95, then the provisions of this subsection apply.

* **Sec. 2.** AS 38.05.030(c) is amended to read:

(c) **The** [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease, disposal, or exchange to the commissioner within three months after the date that they make the acquisition, lease, disposal, or exchange.

* **Sec. 3.** AS 38.05.035(e) is amended to read:

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property, or interests in them. In approving a contract under this subsection, the director need only prepare a single written finding. In addition to the conditions and limitations imposed by law, the director may impose additional conditions or limitations in the contracts as the director

determines, with the consent of the commissioner, will best serve the interests of the state. The preparation and issuance of the written finding by the director are subject to the following:

(1) with the consent of the commissioner and subject to the director's discretion, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director, in the written finding,

(A) shall establish the scope of the administrative review on which the director's determination is based, and the scope of the written finding supporting that determination; the scope of the administrative review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal;

(B) may limit the scope of an administrative review and finding for a proposed disposal to

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to the disposal phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that phase;

(ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department;

(iii) the department's approval is required before the next phase of the project may proceed; and

(iv) the department describes its reasons for a decision to phase;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection;

(3) a written finding for an oil and gas lease sale or gas only lease sale under AS 38.05.180 is subject to (g) of this section;

(4) a contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract, but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(5) public notice requirements relating to the sale, lease, or other disposal of available land or an interest in land for oil and gas, or for gas only, proposed to be scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

(A) before a public hearing, if held, or in any case not less than 180 days before the sale, lease, or other disposal of available land or an interest

1 in land, the director shall make available to the public a preliminary written
2 finding that states the scope of the review established under (1)(A) of this
3 subsection and includes the applicable statutes and regulations, the material
4 facts and issues in accordance with (1)(B) of this subsection, and information
5 required by (g) of this section, upon which the determination that the sale,
6 lease, or other disposal will serve the best interests of the state will be based;
7 the director shall provide opportunity for public comment on the preliminary
8 written finding for a period of not less than 60 days;

9 (B) after the public comment period for the preliminary written
10 finding and not less than 90 days before the sale, lease, or other disposal of
11 available land or an interest in land for oil and gas or for gas only, the director
12 shall make available to the public a final written finding that states the scope of
13 the review established under (1)(A) of this subsection and includes the
14 applicable statutes and regulations, the material facts and issues in accordance
15 with (1) of this subsection, and information required by (g) of this section,
16 upon which the determination that the sale, lease, or other disposal will serve
17 the best interests of the state is based;

18 (6) before a public hearing, if held, or in any case not less than 21 days
19 before the sale, lease, or other disposal of available land, property, resources, or
20 interests in them other than a sale, lease, or other disposal of available land or an
21 interest in land for oil and gas or for gas only under (5) of this subsection, the director
22 shall make available to the public a written finding that, in accordance with (1) of this
23 subsection, sets out the material facts and applicable statutes and regulations and any
24 other information required by statute or regulation to be considered upon which the
25 determination that the sale, lease, or other disposal will best serve the interests of the
26 state was based; **the director may make available to the public a preliminary**
27 **written finding and provide opportunity for public comment on the preliminary**
28 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
29 not required before the approval of

30 (A) a contract for a negotiated sale authorized under
31 AS 38.05.115;

(B) a lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the commissioner;

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

(F) an exempt oil and gas lease sale or gas only lease sale under AS 38.05.180(d) of acreage subject to a best interest finding issued within the previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under AS 38.05.180(w) of acreage subject to a best interest finding issued within the previous 10 years, unless the commissioner determines that substantial new information has become available that justifies a supplement to the most recent best interest finding for the exempt oil and gas lease sale or gas only lease sale acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage; however, for each oil and gas lease sale or gas only lease sale described in this subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (l) of this section;

(G) a surface use lease under AS 38.05.255;

(H) a permit, right-of-way, or easement under AS 38.05.850;

(7) the director shall include in

(A) a preliminary written finding, if issued [REQUIRED], a summary of agency and public comments, if any, obtained as a result of

1 contacts with other agencies concerning a proposed disposal or as a result of
2 informal efforts undertaken by the department to solicit public response to a
3 proposed disposal, and the department's preliminary responses to those
4 comments; and

5 (B) the final written finding a summary of agency and public
6 comments received and the department's responses to those comments.

7 * **Sec. 4.** AS 38.05.035(i) is amended to read:

8 (i) A person who is eligible to file an administrative appeal or a request for
9 reconsideration, as appropriate, under this subsection and who is **substantially and**
10 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
11 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
12 written finding, file an administrative appeal or request reconsideration of the decision
13 by the commissioner. A person is eligible to file an administrative appeal or a request
14 for reconsideration if the person

15 (1) meaningfully participated in the process set out in this chapter for
16 receipt of public comment by

17 (A) submitting written comment during the period for receipt
18 of public comment; or

19 (B) presenting oral testimony at a public hearing, if a public
20 hearing was held; **or** [AND]

21 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
22 FINDING].

23 * **Sec. 5.** AS 38.05.035(j) is amended to read:

24 (j) An administrative appeal or a request for reconsideration submitted under
25 (i) of this section must specify the written finding complained of and the specific basis
26 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
27 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
28 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
29 commissioner to act on **a** [THE] request for reconsideration within **30 days after**
30 **issuance of the final written finding** [THIS PERIOD] is a denial of the request for
31 reconsideration and a final administrative decision for purposes of appeal to the

superior court.

* **Sec. 6.** AS 38.05.035(*l*) is amended to read:

(*l*) A person may appeal a final written finding issued under (e)(5) or (6) of this section to the superior court, but only if the person was eligible to request, and did request, an administrative appeal or reconsideration of that finding under (i) of this section. The person shall initiate the appeal to the court within 30 days from the date that the decision on administrative appeal or reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal to the court are limited to those presented to the commissioner in the person's administrative appeal or request for reconsideration.

* **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

(p) Where there is a valid municipal entitlement selection on state land under AS 29.65.010 - 29.65.030 that has a state-issued land lease that has been issued competitively under AS 38.05.070 and before the decision to approve the municipal entitlement land selection, the director shall grant a preference right to purchase without further competitive bid of up to five acres of the state land to an individual who has erected a building approved by a lease on the state land and used the land for bona fide business purposes for 10 or more years under a state lease, if the business produced not less than 25 percent of the total income of the applicant for the 10 years preceding the application to purchase the land. An application for a preference right under this section must be filed with the director within 120 days after notice to the lessee of the municipal entitlement land selection. If the director grants the preference right, the director shall sell the land at a price determined by the director to represent the current fair market value of the unimproved land determined by an appraisal under AS 38.05.840 and a survey, both at the cost of the applicant. If the director determines that the purchase of the land would interfere with public use by residents of the area, the director may condition the purchase to mitigate the adverse effects on the public in the written finding under AS 38.05.035(e) or may reject the application if those effects cannot be avoided or mitigated. If the preference right application is approved, the amount of land within the overall municipal entitlement under AS 29.65.010 -

29.65.030 shall be reduced by the amount of land covered under this section; however, subject to appropriation, the revenue from the purchase of the parcel will be given to the municipality if the municipal entitlement land selection is approved. In this subsection,

(1) "building" means a permanent type of structure not less than 500 square feet in size with solid walls, foundation, and roof;

(2) "business purposes" means a purpose consistent with the classification of the land at the time the land was entered.

* **Sec. 8.** AS 38.05.065(a) is amended to read:

(a) **Unless the remainder of the purchase price is paid in full at the time of the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055] shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years, with interest at the rate provided in (i) of this section. Installment payments plus interest shall be set on the level-payment basis.

* **Sec. 9.** AS 38.05.065(c) is amended to read:

(c) The director shall, for **a contract that provides for installment payments** [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR EACH SALE] the period for the payment of installments and the total purchase price plus interest. The director, with the consent of the commissioner, may also include in **a contract** [CONTRACTS] under this section conditions, limitations, and terms considered necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law.

* **Sec. 10.** AS 38.05.065(h) is amended to read:

(h) The commissioner, after consulting with the Board of Agriculture and Conservation (AS 03.09.010),

(1) shall provide that, notwithstanding (a) [AND (b)] of this section, in

1 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
2 uses, the interest rate to be charged on installment payments may not exceed 9.5
3 percent; and

4 (2) may declare a moratorium of up to five years on payments on land
5 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
6 uses if

7 (A) the commissioner determines that the moratorium is in the
8 best interest of the state;

9 (B) the commissioner certifies and the contract purchaser
10 agrees to perform farm development, crop production, and harvesting, not
11 including land clearing or related activity, requiring the expenditure of
12 amounts equivalent to the payments that would otherwise be made during the
13 moratorium;

14 (C) the sale of the agricultural land takes place after July 1,
15 1979; and

16 (D) the contract purchaser is in compliance with the
17 development plan specified in the purchase contract at the time the purchaser
18 applies for a moratorium under this paragraph and remains in compliance with
19 the development plan during the moratorium; for the payments subject to the
20 moratorium declared under this paragraph, interest payments are subject to the
21 moratorium but interest continues to accrue during the moratorium.

22 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

23 (f) A lease may be extended once for a period up to two years, if the director
24 determines it to be in the best interests of the state and the extension is necessary to
25 prolong the lease while the department considers

26 (1) a lessee preference application under AS 38.05.102;

27 (2) an application to renew the lease under (e) of this section; or

28 (3) an application to issue a new lease on the same site that, because it
29 substantially changes the purpose or operation of an existing lease, requires a new
30 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
31 is changed.

(g) An extension issued under (f) of this section is not subject to AS 38.05.035(e). The director shall provide public notice of the decision to extend the lease.

* **Sec. 12.** AS 38.05.075(a) is amended to read:

(a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section, when competitive interest has been demonstrated or the commissioner determines that it is in the state's best interests, leasing shall be made at public auction or by sealed bid, at the discretion of the director, to the highest qualified bidder as determined by the commissioner. A bidder may be represented by an attorney or agent at a public auction. In the public notice of a lease to be offered at public auction or by sealed bid, the commissioner shall specify a minimum acceptable bid and the lease compensation method. The lease compensation method shall be designed to maximize the return on the lease to the state and shall be a form of compensation set out in AS 38.05.073(m). **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or request reconsideration under AS 44.37.011; however, the appeal or request must be made** [TO THE COMMISSIONER] within five days **after issuance of the determination of the highest qualified bidder** for a review of the determination. The leasing shall be conducted by the commissioner, and the successful bidder shall deposit at the public auction or with the sealed bid the first year's rental or other lease compensation as specified by the commissioner, or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require, under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner or incurred by the department under AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs or to the department if the department incurred the costs. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or

1 interest leased, the price bid, and the terms of the lease to the successful qualified
2 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
3 commissioner may offer the land for lease again under this subsection. A lease, on a
4 form approved by the attorney general, shall be signed by the successful bidder and by
5 the commissioner.

6 * **Sec. 13.** AS 38.05.075(h) is amended to read:

7 (h) A person substantially and adversely affected [AGGRIEVED] by a
8 decision of the commissioner under this section may appeal or request
9 reconsideration under AS 44.37.011; however, the appeal or request for
10 reconsideration must be made [TO THE COMMISSIONER] within five days after
11 [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER
12 UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR
13 COURT.]

14 * **Sec. 14.** AS 38.05.082(b) is amended to read:

15 (b) The director may classify land as subject to leases for fisheries
16 development and publicly invite applications for lease of the selected areas. Each
17 application shall be accompanied by an affidavit to the effect that the applicant
18 presently intends to personally utilize the leased area for fishing purposes the
19 following season. If two or more applications are received for the same shore area, the
20 director shall award the lease to the most qualified applicant. In determining the
21 qualifications of applicants, the director shall consider the length of time during which
22 the applicant has been engaged in set netting, the proximity of the past fishing sites of
23 the applicant to the land to be leased, the present ability of the applicant to utilize the
24 location to its maximum potential, and other factors relevant to the equitable
25 assignment of the disputed area. If the director cannot determine a preference between
26 conflicting applicants for the same lease site on the basis of qualifications, the director
27 shall select between the applicants by lot. A substantially and adversely affected
28 [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011
29 within 20 [30] days after issuance of the determination for a review of the director's
30 determination.

31 * **Sec. 15.** AS 38.05.083(a) is amended to read:

(a) The commissioner may offer to the public for lease at public auction or by sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or related hatchery operations. Before a final decision to issue [OR RENEW] a lease under this section, the commissioner shall give notice and allow opportunity for comment in accordance with AS 38.05.945 and may hold a hearing to take testimony. Before a final decision to issue [OR RENEW] a lease under this section, the commissioner shall consider all relevant comment or testimony submitted under this section, AS 38.05.945, or 38.05.946.

* **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

(g) The director may renew a lease issued under this section before its expiration if the lease is in good standing and the director determines the lease renewal to be in the best interests of the state. A renewal issued under this subsection is not subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer than 10 years. The director shall provide notice of the decision to renew the lease.

(h) The director may extend the term of a lease issued under this section if the lease is in good standing and the lease extension is determined to be in the best interests of the state. A lease may be only extended once before its expiration for an additional period of not more than two years. A lease extension may only be issued if the director determines the extension is necessary while the department considers

(1) an application to renew the lease under (g) of this section; or

(2) an application to issue a new lease on the same site that, because it substantially changes the purpose or operation of an existing lease, requires a new finding and decision under AS 38.05.035(e) before the purpose or operation of a lease is changed.

(i) An extension issued under (h) of this section is not subject to AS 38.05.035(e). The director shall provide public notice of the decision to extend the lease.

* **Sec. 17.** AS 38.05.185(a) is amended to read:

(a) The acquisition and continuance of rights in and to deposits on state land of minerals, which on January 3, 1959, were subject to location under the mining laws of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in

AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may not be closed to location under AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300. **A preliminary written decision under this subsection may be made available to the public and provide opportunity for public comment on the preliminary written decision for a period of at least 30 days.**

* **Sec. 18.** AS 38.05.300(a) is amended to read:

(a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. **The commissioner may make available to the public a preliminary written classification decision and provide opportunity for public comment on the preliminary written decision for a period of at least 30 days.** If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as

allowed under (c) of this section.

* **Sec. 19.** AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) a preliminary decision, or final decision if a preliminary decision is not issued, regarding the classification or reclassification of state land under AS 38.05.300 or a mineral order or leasehold location order regarding [AND] the availability [CLOSING] of land to mineral leasing or entry under AS 38.05.185;

(2) a preliminary decision, or final decision if a preliminary decision is not issued, regarding the zoning of land under applicable law;

(3) issuance of a

(A) preliminary written finding under AS 38.05.035(e)(5)(A) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas, or for gas only, subject to AS 38.05.180(b);

(B) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6), except

(i) if a preliminary written finding is issued under AS 38.05.035(e)(6); or

(ii) a lease sale described in AS 38.05.035(e)(6)(F) for which the director must provide opportunity for public comment under the provisions of that subparagraph;

(C) preliminary written finding that the director issued under AS 38.05.035(e)(6);

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a preliminary finding under AS 38.05.035(e) concerning sites for aquatic farms and related hatcheries;

(6) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease, or disposal of an interest in state land or resources.

* **Sec. 20.** AS 38.05.965(21) is amended to read:

(21) "state land" or "land" means all land, including shoreland [SHORE], tideland [TIDE], and submerged land, or resources belonging to or acquired by the state;

* **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

(26) "public auction" includes a public oral outcry auction and a public online auction.

* **Sec. 22.** AS 38.50.010 is amended to read:

Sec. 38.50.010. Authorization for exchange of state land. Subject to the requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in land [BY EXCHANGING IT] for land, interest in land, or other consideration when it is in the best interests of the state, including either or both the land estate or mineral estate. Land or an interest in land must be of approximately equal value; however, the director may accept cash from, or pay cash to, any other party to an exchange in order to equalize the value of the property or other consideration conveyed and received by the state. If the director determines that the property that would be exchanged is not of approximately equal value or if the value cannot be ascertained with reasonable certainty, the director may enter into an exchange with a finding that the value of the property that would be received, together with the value of other public benefits, equals or exceeds the value of the property that the state would relinquish. Exchange procedures must comply with applicable statutes and regulations and follow the decision and review procedures under AS 38.05.035(e). The director may include in any patent or the written decision stipulations necessary to promote or protect the public interest. If a land exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other than of an approximately equal value, the director shall forward the proposed exchange to the legislature for review under AS 38.50.140 within 10 days after the convening of the next legislative session. The notice provisions of AS 38.05.945 must be followed [. EXCHANGES SHALL BE FOR THE PURPOSE OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE

ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES].

* **Sec. 23.** AS 38.50.030(b) is amended to read:

(b) The director may negotiate an exchange involving more than one party [; HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE EXECUTED].

* **Sec. 24.** AS 38.50.050 is amended to read:

Sec. 38.50.050. Conveyance of mineral rights. Subject to the requirements of this chapter, the director is authorized to exchange mineral rights in state land to the extent that the conveyance is authorized by the state constitution and applicable federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

* **Sec. 25.** AS 38.50.070 is amended to read:

Sec. 38.50.070. Valid existing rights. Conveyances made by the state under this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,] contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived, the appropriate state agency shall continue to administer valid existing rights, and [AS LONG AS] any revenues derived from the existing rights continue to accrue to the state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED AS PROVIDED IN THE EXCHANGE AGREEMENT].

* **Sec. 26.** AS 38.50.140 is amended to read:

Sec. 38.50.140. Legislative review. Within 10 days after [OF] the convening

of a regular legislative session, the governor shall transmit to the president of the senate and the speaker of the house of representatives any proposal for a land exchange required to be submitted to the legislature for approval under **AS 38.50.010** [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If exigent circumstances seriously affecting state interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement upon approval by the legislature of the proposed exchange agreement. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange.

* **Sec. 27.** AS 38.50.170(3) is amended to read:

(3) "state land" means all land including **shoreland** [SHORE], **tideland** [TIDE], and submerged land or unsevered resources belonging to or acquired by the state excluding interests in land severed or constructively severed from the land.

* **Sec. 28.** AS 40.15.305(e) is amended to read:

(e) A recorded plat may not be altered or replatted except on petition of the state, a municipality, a public utility, or the owner of a majority of the land affected by the proposed alteration or replat. The petition shall be filed with the commissioner and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this subsection. The provisions of (d) of this section do not apply to an alteration or replat petition, but the commissioner shall state in writing reasons for disapproval of the petition. **Alteration of a platted boundary is exempt from this subsection if all owners approve and no public easement or right-of-way is affected. A plat of the alteration remains subject to all other provisions of this section.**

* **Sec. 29.** AS 41.21.167 is amended by adding a new subsection to read:

(e) Performance of a feasibility study for the development and operation of a

hydroelectric site at Chikuminuk Lake is not considered an incompatible use.

* **Sec. 30.** AS 44.37.011(a) is amended to read:

(a) This section applies to administrative appeals or requests [PETITIONS] for reconsideration of a decision in an administrative appeal to the commissioner of natural resources, except for those administrative appeals or requests for reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs between this section and other state law existing at the time of original enactment of this section, the provisions of this section control.

* **Sec. 31.** AS 44.37.011(b) is amended to read:

(b) If a person is an applicant, or substantially and adversely affected [AGGRIEVED] by a decision of the Department of Natural Resources not made by the commissioner and is otherwise eligible to seek the commissioner's review of the decision, the person may appeal to the commissioner. The person may not file a request [PETITION] for reconsideration of the commissioner's decision on the appeal. The commissioner's decision on the administrative appeal is a final administrative order for purposes of filing an appeal of the administrative decision to the court.

* **Sec. 32.** AS 44.37.011(c) is amended to read:

(c) If a person is substantially and adversely affected [AGGRIEVED] by a decision of the department made by the commissioner and is otherwise eligible to seek the commissioner's review of the decision, the person may not appeal that decision to the commissioner; however, the person may request [PETITION THE COMMISSIONER FOR] reconsideration of the commissioner's decision. The commissioner's decision made upon reconsideration or the commissioner's failure to act on the request [PETITION] for reconsideration is a final administrative order for purposes of filing an appeal of the administrative decision to the court.

* **Sec. 33.** AS 44.37.011(d) is amended to read:

(d) If a person has a right to appeal or request [PETITION FOR] reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF] 20 calendar days after the date of issuance of a final department decision [,

1 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
2 **appeal or a request** [PETITION] for reconsideration with the commissioner.

3 * **Sec. 34.** AS 44.37.011 is amended by adding new subsections to read:

4 (f) In this section, in order for a person to be adversely affected, a final
5 decision made by the department must create or impose an adverse and direct effect or
6 detriment on the person or the interests of that person.

7 (g) An appeal or request for reconsideration must include a statement that
8 explains how the person is substantially and adversely affected by the department
9 decision. The statement must

10 (1) specifically describe the substantial and adverse effect on the
11 person that is a direct result of the decision; and

12 (2) explain how the decision caused the substantial and adverse effect
13 on the person.

14 (h) If the department gives public notice and allows a public comment period
15 of at least 30 days on a proposed action, the department may restrict eligibility to
16 appeal or request reconsideration to a person who has provided timely comment on the
17 proposed action by including notice of the restriction as part of the public notice
18 announcing the opportunity to comment.

19 (i) The commissioner may reject an appeal or request for reconsideration for
20 failure to meet the requirements of (f) - (h) of this section.

21 * **Sec. 35.** AS 46.15.035(a) is amended to read:

22 (a) **A significant amount of water, as determined by the department by**
23 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
24 was appropriated to another hydrologic unit, inside or outside the state, without being
25 returned to the hydrologic unit from which it was appropriated nor may **a significant**
26 **amount of** water be appropriated for removal from the hydrologic unit from which the
27 appropriation is sought to another hydrologic unit, inside or outside the state, without
28 the water being returned to the hydrologic unit from which it is to be appropriated,
29 unless the commissioner

30 (1) finds that the water to be removed or appropriated for removal is
31 surplus to needs within the hydrologic unit from which the water is to be removed or

appropriated for removal, including fishing, mining, timber, oil and gas, agriculture, domestic water supply, and other needs as determined by the commissioner;

(2) finds that the application for removal or appropriation for removal meets the requirements of AS 46.15.080; and

(3) assesses a water conservation fee under (b) of this section.

* **Sec. 36.** AS 46.15.133(a) is amended to read:

(a) If the commissioner proposes a sale of water or receives an application for appropriation or removal, when the commissioner determines that the proposal or application is ready for a decision, the commissioner shall prepare a notice containing the location and extent of the proposed sale, appropriation, or removal, the name and address of the applicant, if applicable, and other information the commissioner considers pertinent. The notice shall state that, within 15 days after [OF] publication or service of notice, persons may file with the director written objections [,] stating the name and address of the objector [,] and any facts tending to show that rights of the objector or the public interest as described in AS 46.15.080(b) would be adversely affected by the proposed sale, appropriation, or removal.

* **Sec. 37.** AS 46.15.133(b) is amended to read:

(b) The commissioner shall publish the notice in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated, removed, or sold. The commissioner shall also have notice served personally or by [CERTIFIED] mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands, may be affected by the proposed sale, appropriation, or removal and may serve notice upon any governmental agency, political subdivision, or person; notice shall also be served upon the Department of Fish and Game and the Department of Environmental Conservation. An applicant for an appropriation or removal shall pay the commissioner's costs in providing publication and notice under this subsection. The commissioner may require as a condition of a sale of water under AS 46.15.037, that a purchaser of water reimburse the department for the costs associated with providing notice of the proposed sale.

* **Sec. 38.** AS 46.15.133(d) is amended to read:

(d) If no objection is filed, the commissioner may proceed to make a **final** determination upon the application for appropriation or removal or the proposal for sale.

* **Sec. 39.** AS 46.15.133(e) is amended to read:

(e) A person **adversely affected** [AGGRIEVED] by the action of the commissioner or by the failure of the commissioner to grant, deny, or condition a proposed sale or an application for appropriation or removal in accordance with (c) of this section may appeal to the superior court. **In this subsection, to be adversely affected, a person must be directly affected by a decision made by the department either by a physical or financial detriment to the person's interests resulting from the decision.**

* **Sec. 40.** AS 46.15.145(c) is amended to read:

(c) The commissioner shall issue a certificate reserving the water applied for under this section if the commissioner finds that

(1) the rights of prior appropriators will not be affected by the reservation;

(2) the applicant has demonstrated that a need exists for the reservation;

(3) there is unappropriated water in the stream or body of water sufficient for the reservation; and

(4) the proposed reservation is in the public interest; **in determining the public interest, the commissioner shall consider**

(A) the benefit to the applicant resulting from the proposed reservation;

(B) the effect of the economic activity resulting from the proposed reservation;

(C) the effect on fish and game resources and on public recreational opportunities;

(D) the effect on public health;

(E) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the

proposed reservation;

(F) harm to other persons resulting from the proposed reservation; and

(G) the effect upon access to navigable or public water.

* **Sec. 41.** AS 46.15.145(f) is amended to read:

(f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may** [SHALL] review **a** [EACH] reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose, or part or all of the findings, no longer apply to the reservation, the commissioner may revoke or modify the certificate reserving the water after notice, hearing when appropriate, and a written determination that the revocation or modification is in the best interests of the state.

* **Sec. 42.** AS 46.15.145 is amended by adding new subsections to read:

(g) For any water reservation applied for by a person, the commissioner will issue an approved certificate of reservation to the appropriate state agency, and the applicant receives no property right in the resulting approved certificate of reservation.

(h) The commissioner has the discretion to determine when and in what order any application for a reservation of water is processed, but the order in which an application is processed does not affect priority of appropriation.

(i) The applicant for a reservation of water shall be considered adversely affected by a decision of the commissioner on the application for purposes of appeal under AS 46.15.133(e). Only the applicant for a reservation of water or an agency that holds a reservation under (g) of this section may appeal the commissioner's subsequent administration under (f) of this section of any certificate of reservation issued as a result of the application, which right to appeal may not be transferred or assigned.

(j) Notwithstanding (c) of this section, before the commissioner may issue a certificate of reservation, the applicant must have submitted not less than five years of nonproprietary public domain hydrologic data or hydrologic data collected by or for the applicant to support the application.

* **Sec. 43.** AS 46.15.155(a) is amended to read:

(a) Notwithstanding any contrary provision of this chapter, the commissioner may authorize the temporary use of a significant amount of water, as determined by the department by regulation, for a period of time not to exceed five consecutive years in each authorization, if the water applied for has not been appropriated in accordance with this chapter. The commissioner may issue one or more new temporary water use authorizations for the same project.

* **Sec. 44.** AS 46.15 is amended by adding a new section to read:

Sec. 46.15.257. Interest of applicant. An applicant under this chapter does not have a property right in the application.

* **Sec. 45.** AS 46.15.260(7) is amended to read:

(7) "person" includes an individual, partnership, association, federally recognized tribe, public or private corporation, state agency, political subdivision of the state, and the United States;

* **Sec. 46.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100, 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

* **Sec. 47.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: WOOD-TIKCHIK STATE PARK MANAGEMENT PLAN AND REGULATIONS; ENFORCEMENT. To allow for a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake, the Department of Natural Resources may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan, dated October 2002, and regulations applicable to the Wood-Tikchik State Park that are inconsistent with AS 41.21.167(e), enacted by sec. 29 of this Act.

* **Sec. 48.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: PENDING APPLICATIONS UNDER AS 46.15.145 FOR RESERVED WATER. The Department of Natural Resources shall process applications filed before the effective date of secs. 35 - 45 of this Act using the provisions of this Act.

* **Sec. 49.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Natural Resources may

1 immediately adopt regulations necessary to implement the changes made by this Act. The
2 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
3 2014.

4 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
7 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
8 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
9 administrative appeals and requests for reconsideration to the commissioner of natural
10 resources."

11 * **Sec. 51.** Sections 29, 35 - 45, and 47 - 49 of this Act take effect immediately under
12 AS 01.10.070(c).

13 * **Sec. 52.** Except as provided in sec. 51 of this Act, this Act takes effect July 1, 2014.